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6.1 Requirements for Ordering Restitution

When a juvenile has been found responsible for a violation of a criminal law or ordinance, the court shall order the juvenile or the juvenile's parent to pay restitution as provided in §§30 and 31 of the Juvenile Code, and in §§44 and 45 of the Juvenile Crime Victim's Rights Act. MCL 712A.18(7); MSA 27.3178(598.18)(7), and MCL 712A.30(1)(a); MSA 27.3178(598.30)(1)(a).

6.2 Persons Entitled to Restitution

Restitution is mandatory for any victim of the course of conduct that gave rise to the juvenile's adjudication. MCL 712A.30(2); MSA 27.3178(598.30)(2), and MCL 780.794(2); MSA 28.1287(794)(2). Interpreting identical language in the adult Crime Victim's Rights Act, the Michigan Supreme Court has held that the term "any victim" should be broadly construed to include all persons or organizations who suffered a financial loss as a result of "the course of

*This definition includes insurance companies. See Section 6.8, below.

conduct” that gave rise to defendant’s conviction. *People v Gahan*, 456 Mich 264, 270–72 (1997).

Victim is defined as an individual, sole proprietorship, partnership, corporation, association, governmental entity, or any other legal entity that suffers direct physical or financial harm as a result of a juvenile offense. MCL 712A.30(1)(b); MSA 27.3178(598.30)(1)(b), and MCL 780.794(1)(b); MSA 28.1287(794)(1)(b).*

If the victim is deceased, the court shall order restitution to the victim’s estate. MCL 712A.30(7); MSA 27.3178(598.30)(7), and MCL 780.794(7); MSA 28.1287(794)(7).

6.3 Amount of Restitution Required

MCL 712A.30(2); MSA 27.3178(598.30)(2), and MCL 780.794(2); MSA 28.1287(794)(2), state that at the dispositional hearing for a juvenile offense, the court shall order, in addition to or in lieu of any other disposition authorized by law, that the juvenile shall make full restitution to any victim of the juvenile’s course of conduct that gives rise to the disposition or to the victim’s estate.

6.4 Time Requirements for Making Restitution

If not otherwise provided by the court, restitution shall be made immediately. However, the court may allow the juvenile to make restitution under this section within a specified period or in specified installments. MCL 712A.30(10); MSA 27.3178(598.30)(10), and MCL 780.794(10); MSA 28.1287(794)(10).

A juvenile shall not be detained for a violation of probation, or otherwise, for failure to pay restitution as ordered under this section unless the court determines that the juvenile has the resources to pay the ordered restitution and has not made a good faith effort to do so. MCL 712A.30(14); MSA 27.3178(598.30)(14), and MCL 780.794(14); MSA 28.1287(794)(14).

The Family Division has the power to punish for contempt of court in accordance with MCL 600.1701 et seq.; MSA 27A.1701 et seq., any person who wilfully violates, neglects, or refuses to obey and perform any order or process the court has made or issued while enforcing the provisions of the Juvenile Code. MCL 712A.26; MSA 27.3178(598.26).

The court may punish by the contempt power even after it has terminated jurisdiction over the juvenile. See Form JC 36 (Request and Order Terminating Court Jurisdiction), where the right to enforce payments of any delinquent account or unpaid reimbursement order is reserved. For detailed information on contempt proceedings, see *Benchguide on Contempt of Court* (MJI, 1987).

6.5 Restitution Where Offense Results in Property Destruction

If a juvenile offense results in damage to or loss or destruction of property of a victim of the juvenile offense, or results in the seizure or impoundment of property of a victim of the juvenile offense, the order of restitution may require that the juvenile do one or more of the following, as applicable:

(a) return the property to the owner of the property or to a person designated by the owner;

(b) if return of all of the property is impossible, impractical, or inadequate, pay an amount equal to the greater of Subdivision (i) or (ii), less the value of any portion of the property that was returned:

(i) the value of the property on the date of the damage, loss, or destruction, or

(ii) the value of the property on the date of disposition;

(c) pay the costs of the seizure or impoundment, or both.

MCL 712A.30(3)(a)–(c); MSA 27.3178(598.30)(3)(a)–(c), and MCL 780.794(3)(a)–(c); MSA 28.1287(794)(3)(a)–(c).

6.6 Restitution Where Offense Results in Physical or Psychological Injury

If a juvenile offense results in physical or psychological injury to a victim, the order of restitution may require that the juvenile do one or more of the following, as applicable:

(a) pay an amount equal to the cost of actual medical and related professional services and devices relating to physical and psychological care;

(b) pay an amount equal to the cost of actual physical and occupational therapy and rehabilitation;

(c) reimburse the victim or the victim's estate for after-tax income loss suffered by the victim as a result of the juvenile offense;

(d) pay an amount equal to the cost of psychological and medical treatment for members of the victim's family that has been incurred as a result of the juvenile offense;

(e) pay an amount equal to the costs of actual homemaking and child care expenses incurred as a result of the juvenile offense.

MCL 712A.30(4)(a)–(e); MSA 27.3178(598.30)(4)(a)–(e), and MCL 780.794(4)(a)–(e); MSA 28.1287(794)(4)(a)–(e).

MCL 712A.30(5); MSA 27.3178(598.30)(5), and MCL 780.794(5); MSA 28.1287(794)(5), state that if a juvenile offense resulting in bodily injury also results in the death of a victim, the order of restitution may require that the juvenile pay an amount equal to the cost of actual funeral and related services.

If the victim is deceased, the court shall order restitution to the victim's estate. MCL 712A.18(7); MSA 27.3178(598.18)(7), and MCL 780.794(7); MSA 28.1287(794)(7).

6.7 Orders for Services by Juvenile in Lieu of Money

If the victim or the victim's estate consents, the order of restitution may require that the juvenile make restitution in services in lieu of money. MCL 712A.30(6); MSA 27.3178(598.30)(6), and MCL 780.794(6); MSA 28.1287(794)(6).

6.8 Orders for Restitution to Individuals or Organizations That Provide Money or Services to Victims

The court shall order restitution to the crime victims compensation board or to any individuals, partnerships, corporations, associations, governmental entities, or other legal entities that have compensated the victim or the victim's estate for a loss incurred by the victim to the extent of the compensation paid for that loss. MCL 712A.30(8); MSA 27.3178(598.30)(8), and MCL 780.794(8); MSA 28.1287(794)(8). Thus, the court may order that restitution be paid to an insurance company that has compensated the victim.

The court shall also order restitution for the costs of services provided to persons or entities that have provided services to the victim as a result of the offense. Services that are subject to restitution under this subsection include, but are not limited to, shelter, food, clothing, and transportation. MCL 712A.30(8); MSA 27.3178(598.30)(8), and MCL 780.794(8); MSA 28.1287(794)(8).

However, an order of restitution shall require that all restitution to a victim or victim's estate under the order be made before any restitution to any other person or entity under that order is made. The court shall not order restitution to be paid to a victim or a victim's estate if the victim or victim's estate has received or is to receive compensation for that loss, and the court shall state on the record with specificity the reasons for its actions. If an entity entitled to restitution under this subsection for compensating the victim or the victim's estate cannot or refuses to be reimbursed for that compensation, the restitution paid for that entity shall be deposited in the crime victim's rights assessment fund or its successor fund. MCL 712A.30(8); MSA 27.3178(598.30)(8), and MCL 780.794(8); MSA 28.1287(794)(8).

6.9 Required Reports by Probation Officers

In determining the amount of restitution to order, the court shall consider the amount of loss sustained by any victim as a result of the offense. The court may order the probation officer to obtain information pertaining to the amounts of loss. The probation officer shall include the information collected in the disposition report or in a separate report, as the court directs. The court shall disclose to the juvenile, the juvenile's supervisory parent, and the prosecuting attorney all portions of the disposition or other report pertaining to the amount of loss. MCL 712A.31(1)–(3); MSA 27.3178(598.30a)(1)–(3), and MCL 780.795(1)–(3); MSA 28.1287(795)(1)–(3).

6.10 Hearing Requirements and Burden of Proof

Any dispute as to the proper amount or type of restitution shall be resolved by the court by a preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the juvenile offense shall be on the prosecuting attorney. The burden of demonstrating the financial resources of the juvenile's supervisory parent and any other moral or legal financial obligation of the parent shall be on the supervisory parent. MCL 712A.31(4); MSA 27.3178(598.30a)(4), and MCL 780.795(4); MSA 28.1287(795)(4).

If a criminal defendant disputes the amount of restitution ordered, he or she must raise a proper objection and request an evidentiary hearing. The court is not required to order sua sponte an evidentiary hearing to determine the proper amount of restitution that is due. *People v Grant*, 455 Mich 221, 243 (1997) (construing provisions of the adult Crime Victim's Rights Act).

6.11 Modification of Restitution Orders After Dispositional Hearing

A juvenile who is required to pay restitution and who is not in willful default of the payment of the restitution may at any time petition the court to modify the method of payment. If the court determines that payment under the order will impose a manifest hardship on the juvenile or his or her immediate family, the court may modify the method of payment. MCL 712A.30(12); MSA 27.3178(598.30)(12), and MCL 780.794(12); MSA 28.1287(794)(12).

6.12 Enforcement and Collection of Restitution Orders

An order of restitution remains effective until the amount is satisfied in full. An order of restitution is a judgment and lien against all property of the individual ordered to pay restitution for the amount specified in the order of restitution. The lien may be recorded as provided by law. An order of restitution may be enforced by the prosecuting attorney, a victim, a victim's estate, or any other person or entity named in the order to receive the restitution in the same manner as a judgment in a civil action or a lien. MCL

712A.30(13); MSA 27.3178(598.30)(13), and MCL 780.794(13); MSA 28.1287(794)(13).

6.13 Order of Restitution Directed to a Parent

If the court determines that the juvenile is or will be unable to pay all of the restitution ordered, after notice to the juvenile's parent and an opportunity for the parent to be heard, the court may order the parent or parents having supervisory responsibility for the juvenile at the time of the acts upon which an order of restitution is based to pay any portion of the restitution ordered that is outstanding. An order under this subsection does not relieve the juvenile of his or her obligation to pay restitution, but the amount owed by the juvenile shall be offset by any amount paid by his or her parent. As used in this subsection, "parent" does not include a foster parent. MCL 712A.30(15); MSA 27.3178(598.30)(15), and MCL 780.794(15); MSA 28.1287(794)(15).

If the court orders a parent to pay restitution, the court shall take into account the financial resources of the parent and the burden that the payment of restitution will impose, with due regard to any other moral or legal financial obligations that parent may have. If a parent is required to pay restitution, the court shall provide for payment to be made in specified installments and within a specified period of time. MCL 712A.30(16); MSA 27.3178(598.30)(16), and MCL 780.794(16); MSA 28.1287(794)(16).

An order directed to a parent or other person shall not be binding unless the parent has been given an opportunity for a hearing pursuant to the issuance of a summons or notice as provided in §§12 and 13 of the Juvenile Code. A certified copy of the order must be personally served on the parent or other person. MCL 712A.18(4); MSA 27.3178(598.18)(4).

Note: It may be very helpful for the judge or referee conducting the dispositional or restitution hearing to obtain a waiver on the record of these service requirements.

A parent who has been ordered to pay restitution under MCL 712A.30(15); MSA 27.3178(598.30)(15), may petition the court for a modification of the amount of restitution owed by the parent or for a cancellation of any unpaid portion of the parent's obligation. The court shall cancel all or part of the parent's obligation due if the court determines that payment of the amount due will impose a manifest hardship on the parent. MCL 712A.30(17); MSA 27.3178(598.30)(17), and MCL 780.794(17); MSA 28.1287(794)(17).

6.14 Required Set Offs for Amounts Later Recovered by Victim

Any amount paid to a victim or a victim's estate under an order of restitution shall be set off against any amount later recovered as compensatory damages by the victim or the victim's estate in any federal or state civil proceeding and

shall reduce the amount payable to a victim or a victim's estate by an award from the crime victim's compensation board made after an order of restitution under this section. MCL 712A.30(9); MSA 27.3178(598.30)(9), and MCL 780.794(9); MSA 28.1287(794)(9).

6.15 Restitution and Community Service or Employment Ordered as a Condition of Probation

If the court imposes restitution as a condition of probation, the court must require the juvenile to do either of the following as an additional condition of probation:

“(a) Engage in community service or, with the victim's consent, perform services for the victim.

“(b) Seek and maintain paid employment and pay restitution to the victim from the earnings of that employment.”

MCL 712A.18(8)(a)–(b); MSA 27.3178(598.18)(8)(a)–(b).

See also MCL 712A.30(11); MSA 27.3178(598.30)(11), and MCL 780.794(11); MSA 28.1287(794)(11), which provide that if the juvenile is placed on probation, any restitution ordered under this section shall be a condition of that probation.

6.16 Biannual and Final Review of Restitution as Condition of Probation

Where restitution is ordered as a condition of probation, the juvenile caseworker or probation officer assigned to the case must review the case not less than twice yearly to ensure that restitution is being paid as ordered. The final review must be conducted not less than 60 days before the expiration of the probationary period. MCL 712A.30(18); MSA 27.3178(598.30)(18), and MCL 780.794(18); MSA 28.1287(794)(18).

If the juvenile caseworker or probation officer determines that the restitution is not being paid as ordered, he or she must file a written report of the violation with the court on a form prescribed by the State Court Administrative Office. The report shall include a statement of the amount of the arrearage and any reasons for the arrearage that are known by the juvenile caseworker or probation officer. The juvenile caseworker or probation officer must also immediately provide a copy of the report to the prosecuting attorney. If a motion is filed or other proceedings are initiated to enforce payment of restitution and the court determines that restitution is not being paid or has not been paid as ordered by the court, the court shall promptly take action necessary to compel compliance. MCL 712A.30(18); MSA 27.3178(598.30)(18), and MCL 780.794(18); MSA 28.1287(794)(18).

6.17 Revocation of Probation for Failure to Comply With Restitution Order

The court may revoke probation if the juvenile fails to comply with the order and if the juvenile has not made a good faith effort to comply with the order. In determining whether to revoke probation, the court shall consider the juvenile's employment status, earning ability, and financial resources, the willfulness of the juvenile's failure to pay, and any other special circumstances that may have a bearing on the juvenile's ability to pay. MCL 712A.30(11); MSA 27.3178(598.30)(11), and MCL 780.794(11); MSA 28.1287(794)(11).

A juvenile shall not be detained for a violation of probation for failure to pay restitution as ordered unless the court determines that the juvenile has the resources to pay the ordered restitution and has not made a good faith effort to do so. MCL 712A.30(14); MSA 27.3178(598.30)(14), and MCL 780.794(14); MSA 28.1287(794)(14).

See also MCL 712A.18(9); MSA 27.3178(598.18)(9), which provides that if the court finds that the juvenile is in intentional default of the payment of restitution, or if a juvenile who is ordered to engage in community service intentionally refuses to perform the required community service, the court may revoke or alter the terms and conditions of probation.

6.18 Victim's Rights Fee

MCL 712A.18(12); MSA 27.3178(598.18)(12), provides that if the court enters an order of disposition based on an act that is a "juvenile offense" as defined in MCL 780.901; MSA 28.1287(901), the court shall order the juvenile to pay an assessment as provided in that act.

MCL 780.901(f); MSA 28.1287(901)(f), in turn, defines "juvenile offense" as an offense committed by a juvenile that if committed by an adult would be a felony, serious misdemeanor, or a specified misdemeanor. For a definition of felony, see MCL 780.901(d); MSA 28.1287(901)(d). "Serious misdemeanors" include:

- F leaving the scene of a personal-injury accident, MCL 257.617a; MSA 9.2317(1);
- F operating a vehicle while under the influence of or impaired by intoxicating liquor or a controlled substance, or with an unlawful blood-alcohol content, if the violation involves an accident resulting in damage to another individual's property or physical injury or death to another individual, MCL 257.625; MSA 9.2325;
- F operating a vessel while under the influence of or impaired by intoxicating liquor or a controlled substance, or with an unlawful blood-alcohol content, if the violation involves an accident resulting in damage to

another individual's property or physical injury or death to another individual, MCL 324.80176; MSA 13A.80176;

- F a violation of a local ordinance substantially corresponding to a violation listed above; or
- F a violation charged as a crime or serious misdemeanor but subsequently reduced or pleaded to as a misdemeanor.

MCL 780.901(g); MSA 28.1287(901)(g), and MCL 780.811(a)(i)–(xv); MSA 28.1287(811)(a)(i)–(xv).

“Specified misdemeanors” include:

- F failure to obey a police or conservation officer's direction to stop, MCL 257.602a; MSA 9.2302(1);
- F driving under the influence of alcoholic liquor and/or a controlled substance, or driving with an unlawful bodily alcohol content, MCL 257.625(1); MSA 9.2325(1);
- F driving while visibly impaired, MCL 257.625(3); MSA 9.2325(3);
- F reckless driving, MCL 257.626; MSA 9.2326;
- F operating vehicle with a suspended, revoked, or denied, MCL 257.904; MSA 9.2604;
- F driving a snowmobile while under the influence of intoxicating liquor and/or a controlled substance, or driving a snowmobile with an unlawful bodily alcohol content, MCL 324.82127(1); MSA 13A.82127(1);
- F driving a snowmobile while visibly impaired, MCL 324.82127(3); MSA 13A.82127(3);
- F driving an off-road vehicle while under the influence of intoxicating liquor and/or a controlled substance, or driving an off-road vehicle with an unlawful bodily alcohol content, MCL 324.81134(1)–(2); MSA 13A.81134(1)–(2);
- F driving an off-road vehicle while visibly impaired, MCL 324.81135; MSA 13A.81135;
- F operating a vessel while under the influence of or impaired by intoxicating liquor or a controlled substance, or with an unlawful blood-alcohol content, MCL 324.80176; MSA 13A.80176;
- F a violation of MCL 333.7401–333.7461; MSA 14.15(7401)–14.15(7461), or MCL 333.17766a; MSA 14.15(17766a); and
- F a local ordinance substantially corresponding to one of the violations listed above.

MCL 780.901(h)(i)–(x); MSA 28.1287(901)(h)(i)–(x).

The court shall order each juvenile for whom the court enters an order of disposition for a juvenile offense to pay an assessment of \$20.00. The court shall order a juvenile to pay only one assessment per case. MCL 780.905(2); MSA 28.1287(905)(2).

6.19 Orders for Reimbursement of Costs of Service

An order of disposition placing a juvenile on probation in the juvenile's own home may contain a provision for the reimbursement by the juvenile, parent, guardian, or custodian to the court for the cost of service. If an order is entered under this subsection, an amount due shall be determined and treated in the same manner provided for an order under MCL 712A.18(2); MSA 27.3178(598.18)(2), dealing with reimbursement for cost of care outside the juvenile's own home. MCL 712A.18(3); MSA 27.3178(598.18)(3).

An order of disposition placing a juvenile in or committing a juvenile to care outside of the juvenile's home and under state or court supervision shall contain a provision for reimbursement by the juvenile, parent, guardian, or custodian to the court for the cost of care or service. MCL 712A.18(2); MSA 27.3178(598.18)(2).